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SUPREME COURT OF THE UNITED STATES.

No. 58.—October Term, 1927.

The Baltimore and Ohio Railroad Company, Petitioner, *vs.* Dora Goodman, Administratrix of Nathan Goodman.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[October 31, 1927.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a suit brought by the widow and administratrix of Nathan Goodman against the petitioner for causing his death by running him down at a grade crossing. The defence is that Goodman's own negligence caused the death. At the trial the defendant asked the Court to direct a verdict for it, but the request and others looking to the same direction were refused, and the plaintiff got a verdict and a judgment which was affirmed by the Circuit Court of Appeals. 10 F. (2d) 58.

Goodman was driving an automobile truck in an easterly direction and was killed by a train running southwesterly across the road at a rate of not less than sixty miles an hour. The line was straight but it is said by the respondent that Goodman 'had no practical view' beyond a section house two hundred and forty-three feet north of the crossing until he was about twenty feet from the first rail, or, as the respondent argues, twelve feet from danger, and that then the engine was still obscured by the section house. He had been driving at the rate of ten or twelve miles an hour but had cut down his rate to five or six miles at about forty feet from the crossing. It is thought that there was an emergency in which, so far as appears, Goodman did all that he could.

We do not go into further details as to Goodman's precise situation, beyond mentioning that it was daylight and that he was familiar with the crossing, for it appears to us plain that nothing is suggested by the evidence to relieve Goodman from responsi-

bility for his own death. When a man goes upon a railroad track he knows that he goes to a place where he will be killed if a train comes upon him before he is clear of the track. He knows that he must stop for the train not the train stop for him. In such circumstances it seems to us that if a driver cannot be sure otherwise whether a train is dangerously near he must stop and get out of his vehicle, although obviously he will not often be required to do more than to stop and look. It seems to us that if he relies upon not hearing the train or any signal and takes no further precaution he does so at his own risk. If at the last moment Goodman found himself in an emergency it was his own fault that he did not reduce his speed earlier or come to a stop. It is true as said in *Flannelly* v. *Delaware & Hudson Co.*, 225 U. S. 597, 603, that the question of due care very generally is left to the jury. But we are dealing with a standard of conduct, and when the standard is clear it should be laid down once for all by the Courts. See *Southern Pacific Co.* v. *Berkshire*, 254 U. S. 415, 417, 419.

Judgment reversed.

Mr. Justice SUTHERLAND was absent.

A true copy.

Test:

Clerk, Supreme Court, U. S.